IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6535 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANAGING TRUSTEE

Versus

RENUKABEN KARUNASHANKAR VYAS

Appearance:

MR GM AMIN for Petitioners

MR NAVINCHANDRA OZA for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 01/09/2000

ORAL JUDGEMENT

Neither of the learned advocates is present on call.

2. This petition under Article 227 of the Constitution of India has been preferred by the Managing

Trustee of Pankaj Kelavani Mandal [hereinafter referred to as, `the Trust'] which runs and manages a Secondary Education School in the name of Pankaj Vidyalaya at Ahmedabad. The respondent no. 1 herein [hereinafter referred to as, `the deliquent teacher'] is a Secondary School Teacher in the above referred Pankaj Vidyalaya. The trust challenges the judgment and order dated 19th July, 1990 passed by the Gujarat Secondary Education Tribunal in Applications No. 36 of 1988 and 218 of 1988.

3. It appears that the deliquent teacher was appointed as a Secondary School Teacher in the year 1979, however, since the year 1983, she had become irregular in rendering her service. On several occasions, she remained absent from service. She was continuously absent from service since February, 1987 till December, 1987. The deliquent teacher, however, had sent medical certificates for certain periods of her aforesaid absence. On account of her indiscriminate absence from service, a disciplinary inquiry was initiated against the deliquent teacher by issuing the chargesheet on 24th November, 1987 and a regular inquiry was held in respect of the imputation of charge made against the deliquent teacher. The charge of remaining absent from service was held to be proved. In view of the guilt established against the deliquent teacher, by order dated 26th September, 1988, the deliquent teacher was dismissed from service. Feeling aggrieved, she had preferred the above referred application No. 218 of 1988 before the Tribunal. Pending the aforesaid disciplinary action, the deliquent teacher was, by order dated 16th December, 1987, placed under suspension which was challenged by her in above referred application no. 36 of 1988.

4. Learned Tribunal having tried the aforesaid applications upheld the finding of guilt against the deliquent teacher, however, it is recorded that the deliquent teacher had married in the year 1981 and had born a child in the month of January, 1983. On account of the infant child and the transfer of her husband to Valsad, the deliquent teacher could not attend the service regularly. But, pending the application, the deliquent teacher was continued in service by an interim order made by the Tribunal and during the pendency of the interim order, the service of the deliquent teacher was found to be regular. The Tribunal, therefore, held that the order of dismissal made against the deliquent teacher was not commensurate to the guilt proved against her and substituted the same by the one of withholding of one increment for a year. The period of suspension between 16th December, 1987 to 28th February, 1988 has been

directed to be treated as period on duty and the Trust is directed to pay the difference of salary for the said period of suspension. Feeling aggrieved, the Trust has preferred the present petition.

5. It does appear that the deliquent teacher was irregular in rendering service right from the year 1983 till the year 1987. She remained absent even during the months of March and April, 1987 when ordinarily the annual examinations are held. She appears to have shown scant regard for the education of the students which should be paramount in the mind of any teacher. However, I do not intend to interfere with the impugned judgment and order for the reasons (i) the learned Tribunal has made a categorical observation that during the two years of service pending the application before the Tribunal, the deliquent teacher had rendered regular service and had given no cause of complaint; (ii) pending this petition also, nothing adverse has been reported against the deliquent teacher; (iii) the order of penalty made as far back as on 26th September, 1988 has not been given effect to till the date ie. for almost twelve years. I, therefore, see no justification in interfering with the order of penalty which has not been given effect to for twelve long years, more particularly when nothing adverse has been reported against the deliquent teacher.

6. Petition is dismissed. Rule is discharged. The parties shall bear their own costs.

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Prakash*